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In re application of
Gary Craun et al.
Serial No. 09/839,049
Filed: April 23, 2001
For: ODOR FREE POLYLACTIC ACID MODIFIED AQUEOUS
EMULSION PAINTS FREE OF VOLATILE COALESCING
ORGANIC SOLVENT

DECISION ON
PETITION

This is a response to the SECOND PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION September 28, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment mailed March 17, 2003, be withdrawn since the applicant did not receive the Notice of Allowance and Fee(s) Due mailed November 05, 2002.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.03(c) - NEW PROCEDURE TMOG 1170 O.G. 114). A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the applicant or any authorized representative of the applicant did not receive the Notice of Allowance and Fee(s) Due, mailed November 05, 2002. The evidence provided includes a statement by the petitioner that the Notice of Allowance and Fee(s) Due, mailed November 05, 2002 was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Notice of Allowance and Fee(s) Due was not received. Also provided is a copy of the attorney's application docket records where the Notice of Allowance and Fee(s) Due would have been posted had it been timely received; indicating that the Examiner's Amendment was posted on October 31, 2002. The previous decision mailed August 27, 2003 indicated that an Examiner's Amendment would have been part of the Notice of Allowance and Issue Fee Due and thus applicant must have received the Notice of Allowance and Issue Fee Due. However, further evidence that such was only received on April 16, 2003 by facsimile transmission from the Patent Office and the date of October 31, 2002 was entered only to reconstruct the file history by applicant has been submitted.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Notice of Allowance and Fee(s) Due originally mailed November 05, 2002 and restarting of the period of response from the remail date thereof.

The Petition is **GRANTED**.

Jmstone

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